

In re ) Fair Hearing No. 20,528  
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Appeal of )

The petitioner appeals a decision of the Department for Children and Families disputing the amount of her patient share for Long-term care Medicaid. The issue is whether the Department should use net income when computing patient share.

1. The petitioner's daughter appeared on her behalf at the fair hearing scheduled on October 26, 2006. Petitioner's daughter has a power of attorney to act on behalf of her mother. The petitioner is presently in a nursing home. The facts are not in dispute.

2. The petitioner presently receives income from two sources. Petitioner's monthly Social Security is \$1,020.50; the Social Security Administration deducts \$88.50 for Medicare leaving a net monthly benefit of \$932. Petitioner receives trust income from AT&T. The gross monthly amount is

\$831.24 from which \$61.02 is deducted for taxes leaving a net monthly amount of \$770.22.

3. The Department calculated petitioner's patient share by adding her gross income and then subtracting a standard personal needs allowance and the cost of her insurance (Medicare); the current calculations are:

Gross monthly income	\$1,851.74
Minus personal needs allowance	47.66
Minus payment of Medicare	<u>88.50</u>
Patient share	\$1,715.58

Prior to September 30, 2006, petitioner's monthly patient share was \$1,417.58 due to COBRA payments which were deducted from gross monthly income; the COBRA policy is no longer in effect.

4. The petitioner actually receives \$1,702.22 each month. The net figure reflects the taxes deducted by AT&T. Petitioner's daughter then ensures that the petitioner has her personal needs allowance. As a result, there is a monthly shortfall in the amount the petitioner is paying for her patient share.<sup>1</sup>

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<sup>1</sup> Petitioner's daughter intends to look into using any income tax refund to make up the shortfall or to see if they can persuade AT&T to stop deducting taxes.

ORDER

The Department's decision is affirmed.

REASONS

After the Department determines that an applicant is eligible for long-term care, the Department determines how much of an applicant's income will be paid to the provider each month as the patient's share of the overall cost of care. Medicaid (M) \$ 430.

To determine patient share, the Department takes the applicant's gross income less any allowable deductions. The resulting figure is the patient share. M \$ 431.2. The allowable deductions are set out in M § 432 and include:

- (a) a personal needs allowance or community maintenance allowance (M432.1);
- (b) home upkeep expenses, if applicable (M432.2);
- (c) allocations to community spouse or maintenance needs of family members living in the community, if applicable (M432.3); and
- (d) reasonable medical expenses incurred, if applicable (M420-422).

Health insurance expenses including Medicare Part B are included in M § 421.1.

In petitioner's case, the Department has deducted all applicable deductions. There is no deduction in the regulations for withheld taxes.

The Department's calculation of the petitioner's patient share is correct under the regulations and must be upheld. Fair Hearing No. 17,555. 3 V.S.A. § 3091(d), Fair Hearing Rule 17.

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